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FREEDOM OF INFORMATION ACT REQUEST

Submitted via FOIA Online: <https://www.foiaonline.gov/foiaonline/action/public/request>

Submitted via email to r10foia@epa.gov

Submitted via U.S. Certified Mail #7018 0680 0001 5462 0190

Regional Freedom of Information Act Officer
U.S. EPA, Region 10
Office of Ecosystems, Tribal and Public Affairs
1200 6th Avenue ETPA-124
Seattle, WA 98101

RE: Freedom of Information Act Request Concerning the U.S. EPA's comments on the U.S. Navy's Draft NEPA Analysis Regarding Navy Training Activities On and Above Olympic National Park, the Olympic National Forest, and the Olympic Peninsula.

Dear FOIA Officer,

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, Earthrise Law Center, on behalf of the National Parks Conservation Association ("NPCA"), requests copies of public records in the custody of the Environmental Protection Agency ("EPA"), as identified below.

NPCA is a national non-profit working to protect and enhance America's National Park System for present and future generations. As part of its advocacy, NPCA works to protect all national parks, including Olympic National Park on the Olympic Peninsula in Washington. NPCA is requesting the records described below in furtherance of its organizational mission and its work in Olympic National Park.

Factual Background

NPCA requests the information identified below because it is concerned about the impacts from increased naval training activities on and above Olympic National Park, the Olympic National

Forest, and the Olympic Peninsula. The Navy is currently conducting a National Environmental Policy Act ("NEPA") analysis and in March of 2019 released a draft supplemental environmental impact statement ("SEIS") for public notice and comment. NPCA is aware of communications between EPA and the Navy regarding earlier drafts of this SEIS, but substantive information regarding these communications remains unavailable. *See* Attachment 1. Pursuant to NEPA's regulations, EPA's comments on any draft EIS shall be made available to the public pursuant to FOIA. *See* 40 C.F.R. § 1506.6(f). In order to meaningfully comment on the Navy's SEIS, NPCA respectfully requests the documents identified below, including copies of any comments that the EPA submitted to the Navy regarding any draft SEIS or any portion of or appendix to any draft SEIS.

Documents Requested

Requests for records maintained by EPA are governed by EPA's FOIA regulations. 40 C.F.R. Part 1, subpt. A. Pursuant to these regulations, NPCA requests:

Any and all records regarding the EPA's comments on any draft of the SEIS that the Navy released for public comment in March of 2019. NPCA's request includes, but is not limited to any and all communications between EPA and the Navy regarding any earlier drafts of the 2019 SEIS, including any attachments to those communications.

This request is limited to records created or obtained by the EPA between January 1, 2016 and March 29, 2019. This request applies to all such records in whatever form, including (without limit) correspondence, memoranda, notes, telephone conversation notes, e-mail messages and electronic files, the release of which is not expressly prohibited by law. It also covers any nonidentical duplicated of records that, but reason of notation, attachment, or other alteration or supplement, including any information not contained in the original record. This request is not meant to be exclusive of other records that, though not specifically requested, would have a reasonable relationship to the subject matter of the request. To save resources and mailing expense, we request electronic copies of these documents if available.

Finally, NPCA respectfully requests that EPA include in its response an explanation of which documents, if any, may be privileged or exempt from this FOIA request. If you claim that the records should not be disclosed, please justify your refusal by referring to the specific exemption that you are invoking under the FOIA. 5 U.S.C. § 552(b). Also, please provide those portions of documents with information requested that are not specifically exempted from disclosure. *Id.* If there are no responsive documents to any one of NPCA's requests, either in whole or in part, please indicate that in your written response. NPCA reserves the right to appeal any denial.

Fee Waiver Request

NPCA also requests a waiver of all fees associated with this request. According to EPA regulations, responsive records "will be furnished without charge" if "disclosure of the requested information is in the public interest." 40 C.F.R. § 2.107(l)(1). A request is in the public interest if it meets two requirements: 1) the information "is likely to contribute significantly to public understanding of the operations or activities of the government, and 2) is not primarily in the

commercial interest of the requester.” *Id.*; see also 5 U.S.C. § 552(a)(4)(A)(iii). Further, according to the Ninth Circuit, “FOIA is to be liberally construed in favor of waivers for noncommercial requesters.” *Env’tl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 432 F.3d 945, 947 (9th Cir. 2005) (internal quotations and citations omitted).

EPA regulations outline six factors for determining whether to grant a fee waiver. The agency must consider:

- (i) The subject of the request: whether the subject of the requested records concerns “the operations or activities of the government”;
- (ii) The informative value of the information to be disclosed: whether the disclosure is “likely to contribute” to an understanding of government operations or activities;
- (iii) The contribution to an undertaking of the subject by the general public likely to result from disclosure: whether disclosure of the requested information will contribute to “public understanding”;
- (iv) The significance of the contribution to public understanding: whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities;
- (v) The existence and magnitude of a commercial interest: whether the requester has a commercial interest that would be furthered by the requested disclosure; and,
- (vi) The primary interest in disclosure: whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

40 C.F.R. § 2.107(l).

I. Disclosure of This Information is in the Public Interest Because It Will Contribute Significantly to Public Understanding of Government Operations and Activities.

Here, NPCA’s request for disclosure of the above information is in the public interest because it will significantly contribute to the public’s understanding of EPA’s and the Navy’s operations and activities on and above the Olympic National Park, the Olympic National Forest, and the Olympic Peninsula. Indeed, as shown below, NPCA’s request meets all of the six regulatory factors and therefore should be granted.

a. The Subject of the Request Concerns the Operations or Activities of the Government: the EPA and the Navy.

First, the subject of NPCA’s request concerns the operation and activities of a government agency and a government department—the EPA and the Navy—on and above public lands. *Id.* at § 2.107(l)(2)(i). The EPA is a federal agency within the Department of Interior. The Navy is a federal department under the Department of Defense. Therefore, the subject to the request concerns the operations or activities of the government. The activities are the Navy’s ongoing

training exercises, on and above the Olympic National Park, the Olympic National Forest, and the Olympic Peninsula, and the EPA's comments concerning these activities.

b. Disclosure of "Likely to Contribute" to an Understanding of the Operations or Activities of the Government.

Second, disclosure of the requested information is likely to contribute to an understanding of the operation or activities of the EPA and Navy because disclosure will provide NPCA members and interested members of the public with valuable information concerning activities that will directly impact public land and the surrounding environment. *Id.* at § 2.107(l)(2)(ii). Further, the information will provide insight into the thought process of EPA.

c. Disclosure of This Information Will Contribute to "Public Understanding" of the Subject.

Third, disclosure of this information will contribute to public understanding of government operations and activities. *Id.* at § 2.107(l)(2)(iii). One of the main goals of NEPA is public disclosure. *See Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983). Here, disclosure of the information surrounding the Navy's and the EPA's discussions on the Draft SEIS, including noise impacts, will contribute to public understanding, which will aid the public in providing meaningful comments on the Navy 2019 Draft SEIS.

d. Disclosure Will Contribute "Significantly" to Public Understanding of the Operations or Activities of the Navy.

Fourth, disclosure of the requested information will contribute significantly to the public understanding of the operations or activities of the Navy. 40 C.F.R. § 2.107(l)(2)(iv). To meet this requirement, an organization must show dissemination of the information to a "reasonably broad audience of persons interested in the subject." *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1116 (D.C. Cir. 2015). Here, NPCA has approximately 1.3 million members and supporters and regularly sends email updates and alerts about issues affecting National Parks to these members. NPCA also publishes and sends to its members and others hard copy publications, such as periodical magazines and brochures, both of which discuss developments and issues relating to the parks. Finally, NPCA's website and social media pages contain public information as well. Through these media, NPCA will reach a broad audience of interested persons and will significantly contribute to the public's understanding of the operations or activities of the Navy in and above the Olympic National Park, the Olympic National Forest, and the Olympic Peninsula.

II. NPCA Has No Commercial Interest in Disclosure.

Lastly, EPA regulations governing whether to grant a fee waiver request requires the agency to consider "[t]he existence and magnitude of a commercial interest" and "[t]he primary interest in disclosure" as the second element for a fee request waiver. 40 C.F.R. § 2.107(l)(3). NPCA is a national non-profit working to protect and enhance America's National Park System for present and future generations. As such, NPCA has no commercial, trade, or profit interest in disclosure. Nor will NPCA receive any commercial benefit or payment from the disclosure.

Further, since NPCA does not have a commercial interest in disclosure, the public interest here clearly outweighs any other interests. Even assuming, *arguendo*, that NPCA has a commercial interest, NPCA's primary interest is to inform the public of the activities of the Navy regarding an issue that will directly affect the public's interest in and use of the Olympic National Park, the Olympic National Forest, and the Olympic Peninsula. Therefore, NPCA's primary interest in disclosure is a public interest.

Conclusion

Earthrise Law Center is representing NPCA for purposes of this FOIA request. As provided by FOIA, 5 U.S.C. § 552(a)(6), we trust that we shall receive a reply to this request within twenty business days of receipt. Thank you for your time and attention to this matter, and we look forward to hearing from you shortly. If you have any questions, feel free to contact Tom Buchele at Earthrise Law Center, using the contact information set forth above, or Kevin Cassidy, also at Earthrise Law Center, by email at cassidy@lclark.edu, or by phone at (781) 659-1696, who are providing NPCA with legal representation regarding this FOIA request.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tom Buchele", written over a horizontal line.

Thomas Buchele
Counsel for the National
Parks Conservation Association